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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

CARL DIAMOND HOLBROOK,

Defendant and Appellant.

B219162

(Los Angeles County  
Super. Ct. No. KA086644)

APPEAL from a judgment of the Superior Court of Los Angeles County. Thomas Falls, Judge. Affirmed.

Carl D. Holbrook, in pro. per.; and Judith Vitek, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Carl Diamond Holbrook appeals from the judgment entered following a jury trial in which he was convicted of fleeing from a peace officer with willful or wanton disregard for the safety of persons or property. Defendant was sentenced to state prison for six years. He contends he is a victim of racial profiling. We affirm.

### **BACKGROUND**

On April 22, 2009, a police officer stopped defendant for driving without headlights at night. The interior of defendant's car smelled of marijuana. Defendant was evasive and initially refused to turn off the ignition. While the officer waited for backup, defendant restarted the car and fled. He drove at a high rate of speed down residential streets, ran two stop signs, at times drove on the wrong side of the road, and ultimately turned into a dead end and stopped. Police caught up and arrested him. Most of these events were caught on a police car's video camera.

Defendant was charged with fleeing a peace officer with willful or wanton disregard for the safety of persons or property. (Veh. Code, § 2800.2, subd. (a).) The information also alleged defendant suffered a prior conviction for a serious or violent felony within the meaning of the Three Strikes law, Penal Code sections 667, subdivisions (b)-(i), and 1170.12. It also alleged defendant had previously been convicted of narcotics possession. A jury convicted defendant of felony evasion.

The trial court denied two *Marsden* motions.<sup>1</sup>

During the sentencing hearing, the trial judge denied a motion to strike defendant's prior conviction. The court imposed the two-year midterm for defendant's conviction, doubled to four years due to the prior strike, and added two consecutive one-year terms for defendant's prior felony convictions. Defendant's total sentence was six years. He was also fined \$270.

Defendant filed a timely appeal. We appointed counsel to represent defendant on appeal. After examining the record, counsel filed an opening brief raising no issues and asking this court to review the record independently. On April 22, 2010, we advised

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<sup>1</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

appellant he had 30 days to submit any contentions or issues he wished us to consider. Defendant filed a letter brief alleging his initial traffic stop was the result of racial profiling and disputes the arresting officer's testimony that he was pulled over for driving without his lights.

### **DISCUSSION**

The issue of racial profiling was not raised at trial. “[F]ailure of counsel to raise issues at trial precludes raising those issues on appeal for the first time.” (*People v. Tolhurst* (1982) 139 Cal.App.3d 1, 7.) At trial, the defense made no attempt to impeach the testifying officer's testimony or affirmatively disprove it. In any case, defendant's contentions lack evidentiary support. Nothing in the record indicates any ulterior motive or racial profiling by the officer, and a video introduced into evidence and played for the jury confirmed the officer's version of events. Defendant's contention of police misconduct is without merit.

We also reviewed the record for any indication defendant might have received ineffective assistance of counsel. For trial counsel's failure to raise the racial profiling issue to constitute ineffective assistance, the record must affirmatively disclose the lack of a rational, tactical purpose for the omission. (*People v. Majors* (1998) 18 Cal.4th 385, 403.) Here, the appellate record does not affirmatively show lack of a rational, tactical reason for failing to raise the issue. On the contrary, the record affirmatively shows trial counsel had good reason not to argue defendant was stopped as a result of racial profiling.

The arresting officer testified he pulled defendant over for driving without headlights at night. Defendant maintained at trial that his headlights were on. Defendant now argues he was pulled over because of his race. Not only does no evidence support the theory, defendant apparently admitted to the officer that his headlights did not work properly. At the second *Marsden* hearing, the trial court discussed the video of the traffic stop: “On the tape, the interpretation that the court has of the discussion you had with the officer is that, yes, there's a delay in your headlights kicking on and you had the exact same problem up in Upland . . . .” “[I]n the tape, it appears that you were talking about

the car you were in and the exact same thing, the reason the officer stopped you. So that's the reason why the officer said you pulled out without your lights. You had that conversation with him. [¶] You boxed your lawyer in. What's he supposed to argue? If he argues something different then he's – the jury's going to think he's a liar and then nothing he says was going to have any bearing or weight.”

Given that defendant admitted to the police that sometimes his headlights did not come on immediately, trial counsel could reasonably have believed that to argue to the jury that defendant had been pulled over because of his race would have resulted in loss of credibility. No basis exists, therefore, to conclude trial counsel's failure to raise the racial profiling issue constituted ineffective assistance.

We have examined the entire record and are satisfied that appellant's counsel has fully complied with the responsibilities set forth in *People v. Kelly* (2006) 40 Cal.4th 106, 109–110 and *People v. Wende* (1979) 25 Cal.3d 436, 441. No arguable issues exist.

#### **DISPOSITION**

The judgment is affirmed.

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CHANNEY, J.

We concur:

ROTHSCHILD, Acting P. J.

JOHNSON, J.